

EXHIBIT B

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 HC2, INC.,

5 Plaintiff,

6 -against-

7 ANDREW DELANEY,

8 Defendant.

9 ----- x

10
11 Wellesley, Massachusetts

12 May 18, 2020

13 12:12 p.m.

14
15 ***CONFIDENTIAL***

16
17 VIRTUAL ZOOM DEPOSITION of MICHAEL
18 HEYISON, taken pursuant to Notice, held via
19 Zoom before Fran Insley, a Notary Public of the
20 States of New York and New Jersey.
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2 Q. He was working -- you were not
3 actively working on the matter -- on the,
4 quote/unquote, matter that he lists in
5 Paragraph 5. Read the second sentence of
6 Paragraph 5.

7 A. Yes. "I am not personally involved
8 in the Matter, but have become familiar with it
9 in my role as WilmerHale's General Counsel as a
10 result of Mr. Delaney's actions." Do you want
11 me to stop there?

12 Q. Yes, that's fine. Please tell us
13 for the record what the matter is.

14 MR. BUTTS: I will object and
15 instruct Mr. Heyison not to reveal any
16 privileged information.

17 Q. Without revealing anything of
18 privilege. I mean, it's in the declaration.

19 A. Okay. So I'll do my best to
20 describe it within the confines of privilege
21 and confidentiality that a corporate client
22 retained WilmerHale to provide it with advice.
23 In connection with providing that advice, it
24 was necessary to review many documents and the
25 matter involved review of the documents,

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2 analysis of the documents, and then based on
3 that analysis, reviewing applicable legal
4 standards and then advising the client on the
5 results of the review among other things. So I
6 think that's how I describe it, Mr. Rotman.

7 Q. Was the defendant, Andrew Delaney
8 working on the matter?

9 A. Yes.

10 Q. What was his role in working on the
11 matter? Did he review documents for the
12 matter?

13 A. Yes, Mr. Delaney -- well, reviewed
14 documents for the matter, made determinations
15 of whether they were relevant. He also
16 provided comments on certain documents. He
17 designated documents for noteworthiness, and
18 where he determined that they were noteworthy,
19 provided explanations why, in his view, they
20 were noteworthy in connection with the legal
21 and factual issues of the review. He also
22 provided his analysis of legal issues and fact
23 issues. He provided his views as the
24 connections between issues and materials that
25 were under review. He also --

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2 Q. Well --

3 MR. BUTTS: Mr. Rotman, let him
4 finish his answer, please.

5 A. I'm almost done. And he also made
6 recommendations on search terms that were not
7 being used, but he indicated he thought should
8 be used in connection with the project. So I
9 think that completes my answer.

10 Q. Isn't it correct that he -- that his
11 primary role was reviewing documents on the
12 matter?

13 MR. BUTTS: Objection, you may
14 answer.

15 A. I would say that he was reviewing
16 documents and that's what he was spending most
17 of his time doing, yes.

18 Q. Was that more than 90 percent of his
19 time?

20 A. Oh, I can't, I don't know the answer
21 to that, Mr. Rotman.

22 Q. Mr. Heyison, do you speak Thai or --
23 withdrawn.

24 Let me say -- hold on. I'll get to
25 that in a moment. I want to ask you, isn't it

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2 correct that Andrew Delaney was reviewing Thai
3 documents, and by Thai documents I mean
4 documents that are in the Thai language?

5 A. My understanding is that he was
6 reviewing documents in several languages,
7 English, Thai, and I think there were also
8 Japanese documents.

9 MR. BUTTS: So we will mark the
10 transcript, by the way, as confidential
11 under the protective order.

12 Q. Mr. Heyison, you're coming in it's
13 just kind of a little --

14 A. I can hear you, yes. I can also see
15 you.

16 Q. Can you please read back that last
17 question.

18 (Whereupon the record was read back
19 by the reporter.)

20 Q. Mr. Heyison, isn't it correct that
21 the overwhelming number of documents that he
22 was reviewing were in the Thai language?

23 MR. ROSSI: Objection to form. You
24 may answer.

25 MR. BUTTS: Objection to form.

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2 A. I can't -- I don't know what the
3 percentage of Thai versus English versus
4 Japanese was. I don't know.

5 Q. Did you ask anyone?

6 A. I don't remember whether I asked
7 anybody or not, but if anybody answered the
8 question, I just don't remember what the answer
9 is.

10 Q. Now, do you speak Thai?

11 A. Oh, no, I don't.

12 Q. You're not very familiar with
13 Thailand; isn't that correct?

14 MR. BUTTS: Objection.

15 MR. ROSSI: Objection, form.

16 MR. BUTTS: Form and vague. If you
17 can answer, you can.

18 A. I've never been to Thailand.

19 Q. That's fair enough. Do you know who
20 the prime minister of Thailand is?

21 MR. BUTTS: Objection. You can
22 answer.

23 MR. ROSSI: Objection. It's outside
24 the scope of the declaration.

25 Q. You may answer. I asked him if he

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2 knew.

3 A. No, I don't know who it is,
4 Mr. Rotman.

5 Q. Do you know what type of government
6 Thailand has currently?

7 MR. BUTTS: Objection. You may
8 answer.

9 A. I do not.

10 Q. Now, Mr. Heyison, Mr. Delaney
11 provided legal services to WilmerHale, is that
12 not correct?

13 A. He provided legal services to
14 WilmerHale and its corporate client.

15 Q. Now, was he doing substance -- I'm
16 sorry. You say that in Paragraph 13. I want
17 to point your attention to Paragraph 13 of your
18 declaration.

19 A. Okay.

20 Q. Please read the second sentence.

21 A. Okay. The second sentence of
22 Paragraph 13, "Mr. Delaney is admitted in New
23 York, he provided legal services for WilmerHale
24 and its Corporate Client there, and his conduct
25 is governed by the New York Rules of

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2 Professional Conduct."

3 Q. Was Andrew Delaney doing substantive
4 legal work for WilmerHale?

5 MR. BUTTS: Objection. You may
6 answer.

7 A. He was providing legal services for
8 WilmerHale and its corporate client, I believe
9 as I testified before.

10 Q. Was he researching statutes?

11 MR. BUTTS: Objection. You can
12 answer.

13 A. I don't know whether he researched
14 statutes or not, but I do know that in the
15 background and instruction --

16 Q. I'll take an I don't know. You
17 answered you don't know.

18 MR. BUTTS: No, no, Mr. Rotman.
19 Hold on. It doesn't work that way. You
20 asked a question and the witness gets to
21 complete his answer and then it's your
22 turn again. So, Mr. Heyison --

23 MR. ROTMAN: I asked him if he was
24 researching -- if Andrew Delaney was
25 researching statutes. He answered, I

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2 don't know. Nothing needs to be added to
3 that.

4 MR. BUTTS: Hold on, hold on.

5 Mr. Heyison, finish your answer.

6 A. I don't remember exactly where I
7 was, but I think I was saying that I do know
8 that in the provision of background information
9 and instruction that Mr. Delaney and his fellow
10 reviewers receive, it included statutes.

11 Q. Was Mr. Delaney interpreting
12 statutes?

13 MR. BUTTS: Objection to form. You
14 may answer it if you can.

15 A. Based on what I know about the
16 review, he was conducting in the work he did,
17 he was applying statutes to facts.

18 Q. Was he drafting briefs for
19 WilmerHale?

20 A. No.

21 Q. Was he drafting legal memorandum for
22 WilmerHale?

23 MR. BUTTS: Objection to the form.
24 You may answer.

25 A. Yes, I think he was preparing

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2 memoranda on legal fact issues in connection
3 with the document review. In particular, his
4 provision of comments for noteworthy documents.

5 Q. Was this on WilmerHale letterhead?

6 MR. BUTTS: Objection.

7 A. He was using the platform that was
8 provided to him by Hire Counsel.

9 Q. So he was basically -- would it be
10 fair to say he might have been writing notes in
11 the platform?

12 MR. BUTTS: Objection to that.

13 A. No. I don't think that's fair to
14 say, no.

15 Q. He was drafting memo -- I'm sorry.
16 He was drafting memos in the platform?

17 MR. BUTTS: Objection. You may
18 answer.

19 A. My testimony was that in connection
20 with his duties, one of his responsibilities
21 was to mark or denote documents noteworthy, and
22 in connection with that, to provide a written
23 analysis of why he believed the documents were
24 noteworthy in connection with the legal and
25 factual issues that were the subject of the

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2 review.

3 Q. Was that analysis in the form of
4 notes?

5 MR. BUTTS: If you understand the
6 question, you may answer.

7 A. It was in sentence --

8 Q. You said he did it in a platform.
9 How did he -- did he draft a -- you know, a
10 legal memorandum or did he just input some
11 notes into the platform as you stated before?

12 MR. BUTTS: Objection to form. You
13 may answer.

14 A. So as I understand it, Mr. Rotman,
15 there was -- on the platform there was a place
16 to prepare the analysis of noteworthy
17 documents, and then it's my understanding that
18 then that was transferred to an e-mail and that
19 lawyers are --

20 Q. You just said it was transferred to
21 an e-mail. It was transferred to an e-mail by
22 who?

23 MR. BUTTS: Hold on. Robert, this
24 isn't going to work this way if everyone
25 is talking over one other. You ask, he

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2 answers. When he is done, we will take
3 the next question.

4 MR. ROTMAN: My question was -- can
5 you just repeat the question? I'm talking
6 to the court reporter. He's going beyond
7 what I asked.

8 MR. BUTTS: Well, you know what,
9 then you can ask whatever you like. You
10 can make whatever notes you want on the
11 record but he gets to complete his answer.

12 Q. Mr. Heyison, you stated that Andrew
13 Delaney was drawing analysis; isn't that
14 correct?

15 A. I don't think I used the words
16 "drawing analysis."

17 Q. You used the word "analysis." He
18 was doing analysis, performing analysis?

19 MR. BUTTS: Objection to form.

20 A. Yes.

21 Q. I asked you -- subsequent to that, I
22 said was that analysis in the form of just
23 making notes on the platform?

24 MR. BUTTS: Objection to form. You
25 may answer.

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2 Q. That you referenced yourself?

3 A. All I can tell you is that on the
4 platform my understanding is that there was a
5 space for him to discuss why he thought a
6 document was noteworthy and that he prepared
7 sentences and paragraphs. Now, weather --

8 Q. No -- go ahead?

9 A. I remind you that's a memorandum.

10 Q. Was Andrew Delaney attending
11 hearings for WilmerHale?

12 A. No.

13 Q. Did he meet with WilmerHale clients?

14 A. No.

15 Q. Was his time billed as attorney
16 time?

17 A. I don't -- I don't understand that
18 question.

19 Q. Was his time billed out individually
20 as attorney time?

21 MR. BUTTS: By whom?

22 MR. ROTMAN: By WilmerHale.

23 A. Well, my understanding is that
24 WilmerHale paid Hire Counsel.

25 MR. BUTTS: H-I-R-E.

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2 Q. I mean, I think we've should adopt
3 like a -- because I mean, I will be referring
4 back and forth.

5 A. I can call it --

6 MR. ROSSI: Hire Counsel has been
7 described as HC2 in all of the papers.

8 MR. ROTMAN: Yes, I mean, I'm
9 assuming that by Mr. Heyison referring to
10 Hire Counsel, he is referring to HC2,
11 Inc.?

12 THE WITNESS: I'll try to use HC2
13 from now on.

14 MR. ROSSI: Thank you, Mr. Heyison.

15 Q. Thank you.

16 A. You're welcome.

17 Q. Now, Mr. Heyison, you state in your
18 declaration that Mr. Delaney worked on the
19 document with you for five months; isn't that
20 correct?

21 A. I think I said approximately.

22 Q. I believe that's in Paragraph 20, if
23 you need to refer to it.

24 A. Thank you. I said approximately
25 five months.

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2 A. I don't know the answer to that
3 question.

4 Q. Fair enough. Isn't it correct that
5 he returned to the project on February 18th,
6 2020?

7 A. I don't know the dates.

8 Q. Do you know the circumstances under
9 which he came back?

10 A. No, I do not.

11 MR. BUTTS: Objection. Answer.

12 Q. Now, it is your testimony, is it not
13 correct, that Mr. Delaney reviewed thousands of
14 documents, isn't that correct? I believe
15 that's also in Paragraph 20.

16 A. Yes.

17 Q. Now, thousands is a very imprecise
18 number. Could that number be 5,000?

19 MR. BUTTS: Object to the wind up.

20 If you have the question, just ask him the
21 question.

22 Q. Could that number be at least 5,000?

23 A. Yes, it could be.

24 Q. Could it be at least 10,000?

25 A. No, I don't think it was 10,000.

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2 Q. So approximately -- and I know you
3 used the word "approximately." So it was
4 approximately between 5,000 and 10,000, give or
5 take?

6 MR. BUTTS: Objection to form.

7 A. I have been informed that it's
8 actually almost 8,000 documents.

9 Q. Fair enough. Now, WilmerHale had to
10 collect, review, and assess large number of
11 documents for the review, correct?

12 A. Yes.

13 Q. This is in Paragraph 6, "And the
14 volume of documents was sufficiently large that
15 an outside vendor had to be brought in to
16 provide temporary lawyers to assist in the
17 review collect -- in the review," also in
18 Paragraph 6, is that not correct?

19 MR. BUTTS: Objection to form. If
20 you understand the question, you may
21 answer.

22 A. Yes, that's correct.

23 Q. Now, how many documents were in the
24 review database?

25 A. I don't know.

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2 question?

3 A. No.

4 Q. Did you think it was relevant?

5 A. I don't understand that question.

6 Q. The number of documents that were in
7 the Thai language, did you consider that
8 relevant?

9 MR. ROSSI: Object to the form.

10 A. I don't -- relevant to what? I
11 don't know how to answer that question.

12 Q. Well, is Thai a rare language?

13 MR. ROSSI: Object to the form of
14 the question.

15 MR. BUTTS: Same objection. You may
16 answer, if you can.

17 A. No, I don't think it's a rare
18 language. I mean, people in Thailand speak
19 Thai. I know that.

20 Q. Yes, I'm very well of aware that
21 people in Thailand speak Thai.

22 A. So I don't know why you would say
23 it's a rare language.

24 Q. It's a rare language in the United
25 States, is that not fair to say?

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2 MR. BUTTS: Object to form. You can
3 answer.

4 MR. ROSSI: Objection.

5 A. I don't understand that question.

6 Q. Now, isn't it correct that you
7 personally did not review any of the documents
8 in the database?

9 A. That is correct.

10 Q. If the answer -- if that is correct,
11 you certainly didn't review any Thai documents
12 that were in the database?

13 A. That is correct.

14 Q. Now, you testified that some of the
15 documents -- and I'm pointing to paragraph 21.
16 You testified that some of the documents
17 reviewed --

18 MR. BUTTS: Give him a moment to get
19 there, Robert, so we can hear your
20 question with the reference.

21 A. Yes. All right. I see Paragraph
22 21.

23 Q. It says there that some of the
24 documents in your language reviewed by
25 Mr. Delaney were in a foreign language that he

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2 was fluent in, correct?

3 A. Yes.

4 Q. Was that language Thai?

5 MR. BUTTS: Objection.

6 A. That is my understanding, yes.

7 Q. Now, you testified, also in
8 Paragraph 21, that Mr. Delaney's foreign
9 language proficiency was helpful; isn't that
10 correct?

11 A. Yes.

12 Q. Now, would it be fair to say that
13 his language skills were welcome on the
14 project?

15 MR. BUTTS: Objection to form. You
16 may answer.

17 A. Welcome by whom?

18 Q. Well, you said they were helpful.
19 Your previous -- you stated that it was
20 helpful. So I'm assuming that if they were
21 helpful, they were welcome. I'll always take
22 some help, if I can get some.

23 MR. ROSSI: Object to the form of
24 that.

25 MR. BUTTS: I don't know what you

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2 are asking him now.

3 MR. ROTMAN: I asked him were
4 Mr. Delaney's language skills welcome on
5 the project.

6 MR. BUTTS: Objection. You may
7 answer, if you can.

8 A. Mr. Rotman, I don't know that I can
9 say more than I have been informed that it was
10 helpful that he had foreign language
11 proficiency. Whether people on the project
12 welcomed that or not, I really can't speak for
13 them. I didn't ask that question.

14 Q. Fair enough. That's a legitimate
15 answer. Now, were his language skills
16 productive on the review?

17 MR. BUTTS: Objection. You may
18 answer.

19 A. Yes.

20 Q. Were his language skills
21 indispensable on the Thai review?

22 MR. ROSSI: Objection.

23 A. No.

24 Q. Now, also in Paragraph 21 you say --
25 you state, "Translation services are generally

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2 available at lower cost" than legal services,
3 correct?

4 A. I say that, "Translation only
5 services are generally available at lower
6 cost," yes, I agree with that.

7 Q. Does that apply generally or that
8 applies specifically to Thai translation
9 services?

10 MR. BUTTS: Objection to form. You
11 may answer, if you can.

12 A. I believe generally.

13 Q. WilmerHale asked HC2 to suspend the
14 project on March 17, 2020, isn't that correct?

15 A. March 17, 2020, I believe that is
16 correct.

17 Q. Now, would it be fair to say that
18 Andrew Delaney did not have access to the
19 premises where the review was being conducted
20 after March -- that date again, March 17, 2020?

21 MR. ROSSI: Object to the form of
22 the question.

23 MR. BUTTS: Same. You may answer it
24 again.

25 A. Well, my understanding is that after

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2 docket?

3 MR. BUTTS: Objection, you may
4 answer.

5 A. I don't remember.

6 Q. Now, Mr. Heyison, when did you sign
7 the declaration that is your testimony today?

8 A. Last Friday.

9 Q. Was this after 5:00 p.m. Eastern?

10 A. I don't recall the exact time.

11 Q. Was it before 5:00 p.m. Eastern on
12 Friday?

13 MR. BUTTS: Objection.

14 A. I think it was -- I think it was
15 after.

16 Q. Do you know what time that it
17 actually was?

18 A. I do not.

19 Q. Did you review my declaration before
20 signing your declaration?

21 A. No.

22 Q. Did you review my exhibits -- I'm
23 sorry. Did you review the -- withdrawn.

24 Did you review the exhibits to my
25 declaration before signing your declaration?

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2 MR. BUTTS: Objection to form. You
3 may answer.

4 A. No.

5 Q. Now, did Mr. Rossi or your counsel
6 review my declaration before finalizing your
7 declaration?

8 MR. ROSSI: Object to the form of
9 the question.

10 MR. BUTTS: Yes, likewise.

11 MR. ROTMAN: I asked him if he
12 knows. If he doesn't know, he doesn't
13 know.

14 MR. ROSSI: Well, hold on a second.
15 It implies that I finalized the
16 declaration which -- object to the form.

17 MR. BUTTS: Yes, likewise.

18 A. I don't --

19 Q. Well, I said "either." I said
20 either Mr. Rossi or if you don't know, you
21 don't know. I'll take that answer.

22 MR. BUTTS: You know, we are not --
23 you can't pick which answers are
24 acceptable and which are not. You ask the
25 question. It's a confusing --

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2 MR. ROTMAN: Let him -- let him
3 answer.

4 MR. BUTTS: It's difficult to
5 understand. You're asking him to
6 speculate what's in multiple peoples' head
7 but go ahead. Objection.

8 A. All I can tell you is I didn't even
9 know you had a declaration when I signed mine.
10 So you're asking a question about what people
11 were doing with your declaration in conjunction
12 with mine. I didn't even know you submitted
13 one.

14 Q. I asked you if you knew.

15 A. Yeah, I don't, so no.

16 MR. BUTTS: He's answered the
17 question. Let's keep going.

18 Q. Now, Mr. Heyison, is WilmerHale a
19 party to -- WilmerHale is not a party to this
20 litigation; is that correct?

21 A. That's correct.

22 MR. BUTTS: And this litigation you
23 are referring to is the --

24 MR. ROTMAN: The HC2, yes.

25 MR. BUTTS: In the Southern District

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2 I'm thinking back, it's been, you know, over
3 the years, but I don't remember communicating
4 with you.

5 Q. Sir, was Mr. Delaney selected by
6 WilmerHale to work on the project?

7 A. Yes.

8 Q. Was he selected to work on the
9 project in his capacity as an attorney?

10 A. Yes.

11 Q. In working on the project, did
12 WilmerHale entrust Mr. Delaney with
13 attorney/client privileged information?

14 A. Yes.

15 Q. In working on the project, did
16 WilmerHale entrust Mr. Delaney with attorney
17 work product including the thoughts and
18 impressions of WilmerHale lawyers?

19 A. Yes.

20 Q. In working on the project, did
21 WilmerHale entrust Mr. Delaney with its
22 clients' confidences including highly sensitive
23 confidences?

24 A. Yes.

25 Q. In so doing, did WilmerHale expect

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2 Mr. Delaney to honor whatever obligations he
3 may have had contractually to protect those
4 confidences and that information?

5 A. Yes.

6 Q. In so doing, did WilmerHale expect
7 Mr. Delaney to abide by whatever professional
8 obligations he had as an attorney admitted in
9 New York State?

10 A. Yes.

11 Q. Did you have a chance to review the
12 so-called Florida complaint?

13 A. Yes, I did.

14 Q. Did you come to a conclusion as to
15 whether or not the Florida complaint reveals
16 any such confidences, attorney/client privilege
17 information, or attorney work product that had
18 been entrusted to Mr. Delaney during the course
19 of the project?

20 A. Yes.

21 Q. What was your conclusion, sir?

22 A. The Florida complaint did disclose
23 both privileged and confidential information.

24 Q. Without getting into any of the
25 details, what is the basis for that conclusion?

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2 A. Because as is stated in the
3 complaint, Mr. Delaney says he participated in
4 this privilege and confidential review. He was
5 provided with information about it and reviewed
6 many documents and information that is both
7 privileged and confidential and attorney work
8 product is revealed in the allegations of the
9 Florida complaint.

10 Q. Have you been able to make a
11 determination one way or the other as to
12 whether or not the information that you -- that
13 is in the Florida Complaint that is privileged,
14 confidential, or otherwise protected by an
15 evidentiary privilege was publicly available
16 prior to the time that Mr. Delaney came to know
17 his work on the project?

18 A. I have.

19 Q. What is that view?

20 A. That view is that the information
21 that he revealed in the complaint was not
22 publicly available.

23 Q. And does it follow then that the
24 only reason that he knew it was because it was
25 entrusted to him while he was working in his

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2 capacity as an attorney on the project?

3 A. My understanding is that he was
4 provided with that information and that it was
5 disclosed in the Florida complaint.

6 When I say "provided with that
7 information," he was provided with that
8 information during the course of the
9 confidential review.

10 Q. I take it, sir, that neither
11 WilmerHale nor its corporate client has waived
12 any of those evidentiary privileges or
13 otherwise authorized Mr. Delaney to reveal that
14 information, correct?

15 A. Correct.

16 MR. ROTMAN: I don't think I have
17 any further questions of the witness at
18 this time. Subject to any other questions
19 Mr. Rotman might have.

20 MR. ROTMAN: I just want to recross
21 here. Just follow-up on a couple of
22 items.

23 RECROSS

24 BY MR. ROTMAN:

25 Q. Mr. Heyison, did I understand you to

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2 say that there is no public information in the
3 Florida complaint?

4 MR. BUTTS: Objection.

5 A. I didn't -- I did not give that
6 answer, so I don't know why you would
7 understand from my testimony.

8 Q. Did you go through the whole
9 complaint line by line?

10 A. Yes.

11 Q. Did you go through the footnotes of
12 the complaint?

13 A. Yes.

14 Q. Did you review any internet sources
15 to see what was -- what was the basis of you
16 saying that it was not based on public
17 information? What --

18 MR. BUTTS: Objection to form.

19 MR. ROSSI: Object to the form.

20 A. Because I reviewed -- I reviewed the
21 footnotes and I reviewed the articles that were
22 discussed in the footnotes and the footnotes
23 are not the subject of the confidential review.
24 The information that he disclosed about the
25 confidential review does not appear either in

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2 the footnotes or the articles that are cited in
3 the footnotes. That is public information, but
4 not the information that Mr. Delaney was
5 provided during the review, the documents that
6 he reviewed as part of that review. They are
7 different subject matters.

8 Q. Well, you had stated earlier when I
9 questioned you that you did not review any of
10 the documents of the -- withdrawn.

11 You had stated earlier that you did
12 not review any of the documents within the
13 database; is that correct?

14 A. No, I had not reviewed the
15 documents, but I reviewed the protocols that
16 describe the subject matter of the review.

17 Q. Did you review any -- other than the
18 footnotes, which you said you didn't review,
19 did you review any independent websites out
20 there about the subject matter of the
21 complaint?

22 MR. BUTTS: Objection to form.

23 Answer if you can.

24 A. Well, I know that I reviewed links
25 to the articles that are cited with the Florida

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2 complaint.

3 Q. Anything else?

4 A. I may have. I may have. Oh, I just
5 don't -- you know, it's possible that I may
6 have done some web -- you know, like a brief
7 web search some time, you know, maybe in March
8 or April. I don't -- I don't have a
9 recollection of doing it. I say that because
10 sometimes I'll do that when I have a case and
11 then I'll just do some -- some informal
12 research on it. I just -- it's possible but I
13 just don't have a memory of it.

14 Q. How many -- how many websites did
15 you visit?

16 A. Well, all I can tell you is that --

17 Q. I'm trying to get a breath -- a
18 sense of what the breath of your exam, outside
19 of the protocol was?

20 A. Well --

21 MR. BUTTS: Hold on, hold on.

22 Objection to form. You may answer.

23 A. All I can tell you is that I know
24 that I -- that I clicked on a link -- links in
25 the footnotes that -- somebody sent me those

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2 and then I clicked on those links and I
3 reviewed those articles which I understand are
4 on the Web.

5 Q. Any other articles other than what
6 was in the footnote in the complaint?

7 A. No, I don't recall any others.

8 Q. Were you concerned -- withdrawn.
9 Would it be important that there was
10 other information, publicly available
11 information?

12 MR. BUTTS: You're asking him
13 hypothetically or?

14 Q. You said -- you stated you that
15 reviewed the footnotes, and did he review
16 anything else other than the footnotes online?

17 MR. BUTTS: Objection. You may
18 answer.

19 Q. Other than the footnotes to the
20 complaint.

21 A. Mr. Rotman, I don't know how to
22 answer that. I mean, I know that I reviewed
23 the materials in the footnotes.

24 Q. Anything else?

25 A. Whether I may have reviewed

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2 something else, I just -- I don't have a memory
3 of it, but I'm telling you it's possible.

4 Q. How much of that review did you do
5 other than the footnotes?

6 A. All can I tell you is --

7 Q. How much time did you spend on doing
8 that review?

9 MR. BUTTS: Hold on. Hold on,
10 Robert. All right. There's a couple of
11 questions there. If you ask it, give him
12 a chance to answer. Let's take it fresh.
13 What's the question, please?

14 MR. ROTMAN: Fran, can you just
15 reread that last question?

16 (Whereupon the record was read back
17 by the reporter.)

18 A. I don't know. I didn't -- I didn't
19 calculate it. I didn't look at a clock.
20 Whatever time it took me to read those
21 articles.

22 Q. So you didn't rely on anything that
23 was publicly available?

24 A. No, I did. Those articles are all
25 publicly available.

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2 Q. Well, outside of -- outside of what
3 was in the footnotes, you didn't rely on
4 anything else that was outside of -- you didn't
5 rely on any outside publicly available
6 information for your basis -- Mr. Rossi had
7 asked you what was the basis for your opinion
8 and you cited the protocol or the protocols and
9 the complaint; is that correct?

10 MR. BUTTS: Objection to form. If
11 you understand that, you may answer.

12 A. Well, no, it would -- I don't think
13 that was my answer, but I can tell you what I
14 reviewed. I did review the protocols. I also
15 reviewed -- what do they call those -- sheets
16 that -- coding sheets.

17 I -- and then I saw e-mails that
18 contained Mr. Delaney's noteworthy comments,
19 and I saw the format of those but they were
20 redacted. They were heavily redacted, so
21 those, I didn't see the information. I
22 reviewed -- I reviewed the complaint. I talked
23 to people on the case team about the
24 information in the complaint and was that
25 information part of the review. Was that

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2 information contained in documents. So all of
3 those things, Mr. Rotman, went into my
4 conclusion that the Florida complaint contains
5 privileged and confidential information that
6 Mr. Delaney received in the review. So that's
7 how I would answer the question if you are
8 asking me about the sources.

9 Q. So you said -- you just said you
10 relied on other people to give you information;
11 is that right?

12 A. Yes, in part, in part but only in
13 part. I didn't --

14 Q. Who were those other people?

15 MR. BUTTS: Let him finish, please.

16 A. There were people on the case team.

17 Q. Can you identify a handful?

18 A. Sure.

19 Q. Without telling me what they told
20 you. I just want to know their identity.

21 MR. BUTTS: Objection to form. You
22 may answer.

23 A. So I talked to Ron Machen,
24 M-A-C-H-E-N, Ronald Machen. Oh, I don't know
25 if it's Ronald. I just know it's Ron. I

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2 talked with Jay Holtmeier. I talked with
3 Michael Posada, P-O-S-A-D-A. Holtmeier is
4 H-O-L-T-M-E-I-E-R.

5 Q. Is that it?

6 A. I think those are the people on the
7 case team I spoke with.

8 Q. Anyone else?

9 A. That's all I remember now.

10 Q. What office -- what WilmerHale
11 office does Mr. Machen work out of?

12 A. Washington, D.C.

13 Q. And Mr. Holtmeier?

14 A. New York.

15 Q. Mr. Posada?

16 A. I don't know what office he is in.

17 Q. I presume that information is on the
18 website?

19 MR. BUTTS: I don't know if that's a
20 question or not.

21 MR. ROTMAN: Yes, that's a question.

22 Q. Is that information available on the
23 website?

24 A. I think it is.

25 MR. ROTMAN: I have no further

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2 questions.

3 MR. BUTTS: I have one or two
4 follow-ups.

5 CONTINUED BY

6 BY MR. ROSSI:

7 Q. Mr. Heyison, you just testified
8 about speaking to Mr -- is it Machen?

9 A. Machen.

10 Q. Machen, excuse me, I think I have
11 may have been mispronouncing it, so it's good
12 to know, Machen.

13 Mr. Machen, Mr. Holtmeier, and
14 Mr. Posada?

15 A. Yes.

16 Q. Did you know and understand them to
17 be very knowledgeable about the subject matter
18 of the corporate client representation in a
19 project?

20 A. Yes.

21 Q. Is that why you consulted them on
22 this topic?

23 A. Yes, that's why I consulted with
24 them. They were consulting with me too so it
25 wasn't -- it wasn't one way because, you know,

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2 I was general counsel for the firm.

3 Q. Between March 17, 2020, when the
4 project was suspended and April 15, 2020, when
5 the state court complaint was filed, did
6 WilmerHale have occasion to remind Mr. Delaney
7 about his ethical and contractual obligations
8 with respect to the confidentiality of the
9 information he had obtained during the project?

10 A. Yes.

11 Q. What, if any, reminder did it give
12 him?

13 A. We told Mr. Delaney that he had
14 contractual obligations not to disclose client
15 confidential information, business confidential
16 information, privileged information. We also
17 reminded him of his ethical obligations as a
18 lawyer not to disclose client confidences,
19 which includes privileged information,
20 confidential information, materials that the
21 client has requested not be disclosed, or
22 information that if disclosed would be
23 detrimental or embarrassing to the client.

24 Q. Were these -- were these reminders
25 given to him prior to his causing to be filed

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2 on a public docket in the state court
3 complaint?

4 A. So I can tell you that I remember --
5 I sent him a letter, not a letter, an e-mail on
6 May 27th, not May 27th, March 27th reminding
7 him of his confidentiality obligations, and the
8 day before the Florida complaint was filed by
9 Mr. Delaney's lawyer, Mr. Machen sent
10 Mr. Delaney's lawyer an e-mail expressing
11 concern about the misuse of confidential and
12 privileged information, requesting a discussion
13 and the very next day the Florida complaint
14 with confidential and privilege information in
15 it was filed publicly.

16 Q. Why, during this period, did
17 WilmerHale think it necessary to give these
18 expressed reminders to Mr. Delaney?

19 A. Because it was concerned that
20 Mr. Delaney would not respect his duties.

21 Q. What, if anything, was the basis of
22 those concerns?

23 A. Well, from the very beginning, I
24 believe it was on March 17th, Mr. Delaney sent
25 an e-mail directly to the corporate -- a

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corporate client executive whose identity he became aware of as part of this confidential review and was confidential information that was improperly used.

And so from March 17 forward, we were concerned about whether Mr. Delaney would respect his contractual and professional ethical obligations, and that concern continued because Mr. Delaney kept sending e-mails directly to WilmerHale and to the corporate client when he had been told they represented parties and he should not do that anymore but he ignored that. He just repeatedly kept sending those e-mails, which was additional concern about whether he would respect his professional obligations.

And then his lawyer wrote -- his Florida lawyer wrote another e-mail directly to the president of the corporate client or an affiliate discussing confidential information and privileged information in that letter which was cause for additional concern.

Mr. Machen, as I told you before, wrote a letter expressing that concern, and

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what happened showed that that concern, which we had throughout this whole period, was justified because his lawyer, the next day, the very next day, filed a complaint publicly with confidential and privileged information. So that's why we were concerned and it turned out very unfortunately that those concerns were justified.

Q. During this period of concern that you describe between March 17 and April 15, had Mr. Delaney made any demands on the corporate client, Wilmer or did you know --

MR. ROTMAN: Objection, a lot of this testimony is outside of the scope of what I asked him. We're going -- we are on direct now. It sounds like you're going into a direct examination, Mr. Rossi. I don't think you have a form for that.

Q. Go ahead and answer, Mr. Heyison, if you have the question in mind.

A. I don't. If you could repeat it for me, please.

Q. Sure. During this period of concern

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that you just described that was roughly between 17 March 2020 and 15 April 2020, had Mr. Delaney made any monetary demands on either the corporate client, WilmerHale, or if you know, HC2?

MR. ROTMAN: Objection. What is "monetary demands"?

A. I believe in his very first e-mail he did. He said that he wanted to be paid and then he threatened legal action against WilmerHale and the corporate client. So from the very beginning, and then I understand that he made certain demands and then he retained a lawyer who made a demand on his behalf of \$450,000. And then I don't know what happened to that lawyer, but then he retained another lawyer in Florida who made demands on the corporate client to get paid in settlement, I think he called it, and then the very next day without waiting to hear back, he filed the complaint. He said in that letter, if I remember correctly, he said, please respond in seven days. He sent the letter on April 13. The very next day he filed a complaint.

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2 Q. Prior to Mr. Delaney causing the
3 state court complaint to be filed, had either
4 WilmerHale or it's corporate client acceded to
5 any of its monetary demands?

6 MR. ROTMAN: Objection to monetary
7 demands.

8 A. No, I don't believe they did.

9 MR. ROSSI: I don't have any further
10 questions of the witness at this time.
11 Thank you, Mr. Heyison, for your time.

12 THE WITNESS: You're welcome.

13 MR. BUTTS: It seems like we are
14 concluded.

15 MR. ROTMAN: Yes, we are.

16 (Time noted: 1:33 p.m.)

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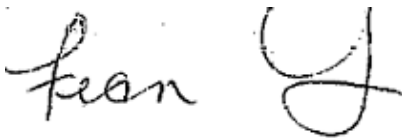
C E R T I F I C A T E

I, FRAN INSLEY, hereby certify that the Deposition of Michael Heyison was held before me on the 18th day of May, 2020; that said witness was duly sworn before the commencement of testimony; that the testimony was taken stenographically by myself and then transcribed by myself; that the party was represented by counsel as appears herein;

That the within transcript is a true record of the Deposition of said witness;

That I am not connected by blood or marriage with any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of May, 2020.

A handwritten signature in cursive script, appearing to read "Fran Insley".

FRAN INSLEY